

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
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JULY 12, 2010

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2010

going medical necessity for coverage provided under this section at least annually.

C. The contract may not include any limits on the number of visits.

D. Notwithstanding section 4234-A and to the extent allowed by federal law for group contracts, the contract may limit coverage for applied behavior analysis to \$36,000 per year. A health maintenance organization may not apply payments for coverage unrelated to autism spectrum disorders to any maximum benefit established under this paragraph.

E. This subsection may not be construed to require coverage for prescription drugs if prescription drug coverage is not provided by the contract. Coverage for prescription drugs for the treatment of autism spectrum disorders must be determined in the same manner as coverage for prescription drugs for the treatment of any other illness or condition is determined under the contract.

3. Limits; coinsurance; deductibles. Except as otherwise provided in this section, any contract that provides coverage for services under this section may contain provisions for maximum benefits and coinsurance and reasonable limitations, deductibles and exclusions to the extent that these provisions are not inconsistent with the requirements of this section.

4. Individualized education plan. This section may not be construed to affect any obligation to provide services to an individual with an autism spectrum disorder under an individualized education plan or an individualized family service plan.

Sec. 5. Bureau of Insurance report. The Department of Professional and Financial Regulation, Bureau of Insurance shall review and evaluate the financial impact, social impact and medical efficacy of the mandated health insurance benefit required in this Act after its enactment in the same manner as required for proposed mandated health benefits legislation in the Maine Revised Statutes, Title 24-A, section 2752. The bureau shall also compare the projected cost impact of this mandated benefit prior to enactment and the actual cost impact of the mandated benefit based on premium information after enactment. As part of its assessment of the financial impact of the mandate, the bureau shall analyze the number of children receiving coverage under the mandated benefit, the costs of treatment services for autism spectrum disorders, including applied behavior analysis, and the extent to which the requirement for coverage of applied behavior analysis has affected the actual cost impact of the mandated benefit on health insurance premiums. The bureau shall contract within the bureau's existing budgeted resources for any necessary consulting and actuarial expertise to complete the report required by this section. The bureau shall submit a report, includ-

ing any recommendations for legislation, to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters no later than February 1, 2015. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out a bill based on the report to the First Regular Session of the 127th Legislature.

Sec. 6. Application. The requirements of this Act apply to all policies, contracts and certificates subject to this Act that are executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 2011. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

See title page for effective date.

CHAPTER 636

H.P. 333 - L.D. 445

An Act To Improve Tribal-State Relations

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 3 MRSA §1, 2nd ¶, as enacted by PL 1983, c. 481, is amended to read:

The Tribal Clerk of the Penobscot Indian Nation shall, on or before the day preceding the meeting of the Legislature, furnish to the Clerk of the preceding House of Representatives a certification, under the seal of the Nation, of the name and residence of the Representative-elect of the Penobscot Indian Nation to the Legislature. The Tribal Clerk of the Passamaquoddy Tribe of the reservation from which the Representative-elect of that tribe has been chosen shall, on or before the day preceding the meeting of the Legislature, furnish the Clerk of the preceding House of Representatives a certification of the name and residence of the Representative-elect of the Passamaquoddy Tribe to the Legislature. Beginning with the 126th Legislature, the Tribal Clerk of the Houlton Band of Maliseet Indians shall, on or before the day preceding the meeting of the Legislature, furnish to the Clerk of the preceding House of Representatives a certification of the name and residence of the Representative-elect of the Houlton Band of Maliseet Indians to the Legislature.

Sec. A-2. 3 MRSA §2, 8th ¶, as amended by PL 2009, c. 431, §1, is further amended to read:

The member of the Penobscot Indian Nation ~~and~~, the member of the Passamaquoddy Indian Tribe and, beginning with the Second Regular Session of the

125th Legislature, the member of the Houlton Band of Maliseet Indians elected to represent their tribes at the Legislature are entitled to receive a salary equal to the salary of members of the Senate and the House of Representatives, including a cost-of-living adjustment, for each regular session and allowance for meals, constituent service, housing and travel expenses to the same extent as members of the House of Representatives for attendance at each legislative session or authorized committee meeting. For the duration of any special session of the Legislature, they are entitled to receive the same per diem payment and allowances, including housing, meal and travel expenses, as any member of the Senate and House of Representatives.

Sec. A-3. Initial Representative of the Houlton Band of Maliseet Indians. The Tribal Clerk of the Houlton Band of Maliseet Indians shall, on or before the day preceding the meeting of the Second Regular Session of the 125th Legislature, furnish to the Clerk of the House of Representatives a certification of the name and residence of the Representative-elect of the Houlton Band of Maliseet Indians to the Legislature.

PART B

Sec. B-1. 30 MRSA §6203, sub-§8, as amended by PL 1987, c. 712, §§1 and 2, is further amended to read:

8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land ~~shall~~ **must** be included within the Penobscot Indian Reservation.

The "Penobscot Indian Reservation" includes the following parcels of land ~~which~~ **that** have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.

The "Penobscot Indian Reservation" also includes a certain parcel of land located in Argyle, Penobscot County consisting of approximately 714 acres known as the Argyle East Parcel and more particularly de-

scribed as Parcel One in a deed from the Penobscot Indian Nation to the United States of America dated November 22, 2005 and recorded at the Penobscot County Registry of Deeds in Book 10267, Page 265.

Sec. B-2. Effective date. That section of this Part that amends the Maine Revised Statutes, Title 30, section 6203, subsection 8 does not take effect unless, within 90 days of the adjournment of the Second Regular Session of the 124th Legislature, the Secretary of State receives written certification by the Tribal Chief and the Council of the Penobscot Nation that the nation has agreed to the provisions of this Part, pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes; except that in no event may that section of this Part that amends the Maine Revised Statutes, Title 30, section 6203, subsection 8 become effective until 100 days after the adjournment of the Second Regular Session of the 124th Legislature.

PART C

Sec. C-1. 5 MRSA §1664, sub-§3-B is enacted to read:

3-B. Maine Indian Tribal-State Commission appropriations or allocations. If the Governor submits legislation setting forth appropriations or allocations for the Maine Indian Tribal-State Commission that differ from the full budget proposal developed under Title 30, section 6212, subsection 6, the Governor shall simultaneously submit a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over judiciary matters explaining why the Governor's budget legislation differs from that proposal.

Sec. C-2. 5 MRSA §1665, sub-§1, as amended by PL 2005, c. 601, §2, is further amended to read:

1. Expenditure and appropriation requirements. On or before September 1st of the even-numbered years, all departments and other agencies of the State Government and corporations and associations receiving or desiring to receive state funds under the provisions of law shall prepare, in the manner prescribed by the State Budget Officer, and submit to the officer estimates of their expenditure and appropriation requirements for each fiscal year of the ensuing biennium. The expenditure estimates must be classified to set forth the data by funds, organization units, character and objects of expenditure. The organization units may be subclassified by functions and activities, or in any other manner, at the discretion of the State Budget Officer.

All departments and other agencies receiving or desiring to receive state funds from the Highway Fund shall submit to the officer estimates of their expenditure and appropriation requirements for each fiscal year of the ensuing biennium that do not exceed the Highway Fund appropriation of the previous fiscal year multiplied by one plus the average real personal income growth rate or 2.75%, whichever is less. The Highway Fund highway and bridge improvement accounts are exempt from this spending limitation.

The State Budget Officer shall request that the Governor provide the budget proposal for the Maine Indian Tribal-State Commission developed pursuant to Title 30, section 6212, subsection 6.

Sec. C-3. 30 MRSA §6212, sub-§6, as enacted by PL 1993, c. 600, Pt. A, §24 and affected by §25, is amended to read:

6. Funding. The commission may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter 149, upon receipt of a written request from the commission, the State Controller shall pay the commission's full state allotment for each fiscal year to meet the estimated annual disbursement requirements of the commission.

The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the following tribes shall communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding:

- A. The Houlton Band of Maliseet Indians;
- B. The Passamaquoddy Tribe; and
- C. The Penobscot Nation.

Sec. C-4. Effective date. That section of this Part that amends the Maine Revised Statutes, Title 30, section 6212, subsection 6 does not take effect unless, within 90 days of the adjournment of the Second Regular Session of the 124th Legislature, the Secretary of State receives the following:

1. Written certification by the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of that section of this Part that amends Title 30, section 6212, subsection 6, pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes;

2. Written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of that section of this Part that amends Title 30, section 6212, subsection 6, pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes; and

3. Written certification by the Tribal Chief and the Council of the Penobscot Nation that the nation has agreed to the provisions of that section of this Part that amends Title 30, section 6212, subsection 6, pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes.

In no event may that section of this Part that amends Title 30, section 6212, subsection 6 become effective until 100 days after the adjournment of the Second Regular Session of the 124th Legislature.

PART D

Sec. D-1. 30-A MRSA §2201, as amended by PL 2003, c. 696, §13, is further amended to read:

§2201. Purpose

It is the purpose of this chapter to permit public agencies, ~~as defined in section 2202 of the State or any adjoining state~~, including, but not limited to, municipalities, counties, ~~and~~ school administrative units, ~~and state federal agencies, and Indian tribes and their political subdivisions~~ to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby to provide services and facilities within the State in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of communities.

Sec. D-2. 30-A MRSA §2202, sub-§2 is enacted to read:

2. Party. "Party" means a public agency or the following federally recognized Indian tribes or their political subdivisions:

- A. The Passamaquoddy Tribe; and
- B. The Penobscot Nation.

Sec. D-3. 30-A MRSA §2203, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§2203. Joint exercise of powers

Any power or powers, privileges or authority exercised or capable of exercise by a ~~public agency of the State~~ party to an agreement under this chapter may be exercised and enjoyed jointly or cooperatively with

any other ~~public agency of this State, or of the Federal Government~~ party to the extent that federal laws, when applicable, permit the joint or cooperative exercise. When acting jointly or cooperatively with any ~~public agency~~ party, any agency of State Government may exercise all of the powers, privileges and authority conferred by this chapter upon a public agency.

1. Agreement. Any 2 or more ~~public agencies~~ parties may enter into agreements with one another for joint or cooperative action under this chapter. The governing bodies of the participating ~~public agencies~~ parties must take appropriate action by ordinance, resolution or other action under law before any such agreement may become effective.

2. Specifications. Any agreement made under this chapter must specify the following:

- A. Its duration;
- B. The precise organization, composition and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to that entity, provided the entity may be legally created;
- C. Its purpose;
- D. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget for the undertaking;
- E. The method to be used to partially or completely terminate the agreement and to dispose of property upon termination; and
- F. Any other necessary and proper matters.

3. Additional items. If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement, in addition to the items listed in subsection 2, must contain the following.

- A. It must provide for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, all ~~public agencies~~ party parties to the agreement must be represented.
- B. It must provide the manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

4. Responsibility. No agreement made under this chapter may relieve any ~~public agency~~ party of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance by a joint board or other legal or administrative entity created by an agreement made under this chapter. This performance may be offered in satisfaction of the obligation or responsibility.

5. Liability. An action is maintainable against any ~~public agency~~ party whose default, failure of per-

formance or other conduct caused or contributed to the incurring of damage or liability by the other ~~public agencies~~ parties jointly.

6. Notice to regional councils. Any agreement made under this chapter is subject to the reporting requirements of section 2342, subsection 6, if applicable.

7. Liberal construction. It being the intent of the Legislature to avoid the proliferation of special purpose districts and inflexible enabling laws, this chapter ~~shall~~ must be liberally construed toward that end.

8. Limitation. Notwithstanding any other provision of this chapter:

- A. No powers, privileges or authority may be jointly or cooperatively exercised unless each type of power, privilege or authority exercised is capable of being exercised by at least one of the parties within the entire jurisdictional area of the ~~contract agreement~~, or by each of the several parties within each of their several jurisdictions if all of the several jurisdictions make up the total jurisdictional area of the ~~contract agreement~~; or
- B. No essential legislative powers, taxing authority or eminent domain power may be delegated by ~~contract agreement~~ to a joint authority or administrative entity.

Sec. D-4. 30-A MRSA §2206, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§2206. Funds, personnel and services

Any ~~public agency~~ party entering into an agreement under this chapter may appropriate funds and may sell, lease, give or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing any personnel or services for that purpose that it may legally furnish.

Sec. D-5. 30-A MRSA §2208 is enacted to read:

§2208. Agreements involving federally recognized Indian tribes

This chapter does not apply to and has no effect on any agreement to which any federally recognized Indian tribe is a party if the agreement has not been entered into under the authority of this chapter.

See title page for effective date, unless otherwise indicated.